

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 563 of 1992

with

CRIMINAL APPEAL No 915 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PANDEY VIJAYKUMAR LAXMAN

Versus

STATE OF GUJ

Appearance:

1. Criminal Appeal No. 563 of 1992
MR BN RAVAL for Petitioner
MR YF MEHTA, APP for Respondent No. 1
2. Criminal Appeal No 915 of 1992
MR BN RAVAL for Petitioner
MR YF MEHTA, APP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 11/12/96

ORAL JUDGEMENT: (Per Pandya, J.)

1. The appellants are the accused of Sessions Case No.79 of 1990 of the Court of learned Sessions Judge of Sabarkantha at Himatnagar. The incident happened on 8.7.1990 at about 5 P.M. in the field of the deceased, situated on the outskirts of village Limda, taluka Vijaynagar. According to the prosecution, the accused came respectively with stick and Dharia and there has been hue and cry and in the process gave a stick blow to the complainant Jiviben and a Dharia blow to Rupaji Kavadaji. This blow was given by accused No.2. The deceased and the accused were real brothers and were having dispute about the land boundary. The deceased was first taken to hospital at Himatnagar and from there he was referred to Civil Hospital, Ahmedabad, where he died almost after two months in September 1990.

2. The offence which was initially registered was the one under Section 326, I.P.C. and, thereafter, modified as one punishable under Section 302. The accused, therefore, faced that charge before the learned Sessions Judge, among other offences, they being offence under Sections 323, 325, 504 and 337 read with Section 34 of I.P.C. By judgment dated 2.5.1992, the learned Sessions Judge held the accused guilty for offence punishable under Section 302 as well as 325, I.P.C. and awarded sentence of life imprisonment. No separate sentence was awarded for offence under Section 325.

3. Surprisingly, though the deceased survived for almost two months, neither his statement nor his dying declaration has been recorded. However, there are eye witnesses, namely, Jiviben and her mother Kamiben. Needless to state that they have supported the case of the prosecution.

4. All along the defence of the accused-appellant has been that they had gone to plead with the deceased that he should refrain Jiviben, who is of a quarrelsome nature, and on the fateful evening, they had seen Jiviben along with Kailashben were trying encroach upon the land of the accused by realigning the hedge. As Jiviben was busy doing this, the accused went to complaint to the deceased-Rupsi. Complainant-Jiviben and Kailashben followed the accused. Jiviben had a Dharia with her and Kailashben had a stick. On finding the accused talking with her parents, Jiviben came there in an aggressive mood and, in the process, verbal exchanges took place.

According to the accused, it was Jiviben, who tried to give a Dharia blow upon accused No.1-Vijay, which unfortunately landed on the head of the deceased. No doubt, Jiviben has denied these suggestions put to her in the cross-examination in the course of her deposition Ex.19, P.W.3, page 64 of the paper book. Nonetheless, the fact remains that both the accused had received injuries. They were examined by doctor Dalabhai, P.W.1, Ex.7, on the very next day at about 8.45 A.M. The history given was that the injuries were received in that struggle. Accused No.2 had four injuries of abrasion and tenderness while accused No.1 had two abrasions. Both the injuries were capable of being caused by hard and blunt substance.

5. In the further statement also, in writing Ex.64, page 138 onwards, the accused have narrated the incident on the line on the question put in cross-examination.

6. The overall situation that emerges, therefore, is that the accused were present at the site of the incident and situation gradually worsened and soon deteriorated into a scuffle. It is, therefore, not possible to hold that the action of giving blow to the deceased was intentional. However, it being a Dharia blow about which there is not dispute, the knowledge has to be attributed and, therefore, instead of offence under Section 302, obviously, it will be an offence punishable under Section 304 Part II. This is to say that it is a case of culpable homicide not amounting to murder.

7. We, therefore, accept the appeal to that limited extent. Now, coming to the sentence, right from the date of the incident, they have been arrested and because of advanced age of accused No.2, he has been released on bail in the month of February, 1994. Taking overall view of the matter, the period undergone by the respective accused, in our opinion, would be enough. Accused No.1 is ordered to be set at liberty forthwith, if not required for any other purpose. So far as accused No.2 is concerned, his bail bond shall stand cancelled.

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